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CORRESPONDENCE

RESPECTING

THE SUGARS

OF

CUBA AND PORTO RICO.

Presented to both Houses of Parliament by Her Majesty's Command.
1845.

LONDON:
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Copies of Correspondence respecting the Claim of Spain that the Sugars of Cuba and Porto Rico should be admitted into the United Kingdom upon the same terms as the Sugars of the United States and of Venezuela.

No. 1.

Copy of a note from the Duke of Sotomayor to the Earl of Aberdeen.

Londres, 5 de Mayo de 1845.

EL Infrascrito, Enviado Extraordinario y Ministro Plenipotenciario de Su Majestad Católica, tiene la honra de hacer presente al Excelentisimo Señor Conde de Aberdeen, Primer Secretario de Estado de Negocios Estrangeros de Su Majestad Britanica, que ha recibido órdenes de su Gobierno para dirijir á su Excelencia una reclamacion con motivo de las medidas adoptadas últimamente por el Gobierno Ingles relativas á los derechos de importacion en este pais sobre los azúcares procedentes de Cuba y Puerto Rico que, en concepto del Gobierno Español, envuelven una alteracion notable en las disposiciones de los Tratados vigentes hasta ahora entre las dos naciones.

Conforme al espiritu y letra de los referidos Tratados, las dos Potencias deben disfrutar reciprocamente en sus relaciones comerciales, de las mismas franquicias, ventajas y privilegios que se concedan por cualquiera de ellas á la nacion mas favorecida. Asi se ha considerado siempre; y serán suficientes para ponerlo fuera del alcance de la mas escrupulosa duda, las repetidas y muy recientes reclamaciones del Representante de Su Majestad Britanica en la Corte de Madrid, invocando la fiel observancia de estas disposiciones en todo aquello que ha juzgado convenir á los intereses y comercio de la Gran Bretaña.

Por el Articulo 9no del Tratado de Utrecht se estableció por regla general, que "Todos y cada uno de los súbditos de ambos reinos, en todas las tierras y lugares de uno y otro, en cuanto mira á los derechos imposiciones y cargas concernientes á las personas, mercaderias, navios, fletes, marineros, navegacion y comercio, usen y gozen, á lo menos, de los mismos privilegios, franquezas é inmunidades, y tengan en todo igual favor que los súbditos de Francia ó de otra nacion estraña la mas amiga usan poseen y gozan ó puedan de aqui en adelante tener ó gozar."

En el Articulo 2do del Tratado de Navegacion y Comercio entre España y la Gran Bretaña, firmado en Utrecht $\frac{28\text{ Novembre}}{9\text{ Diciembre}}$ de 1713, renovado por el de Versalles en 1783, consignaron con mas claridad aun las Altas Partes Contratantes cual era su espiritu y su intencion con respecto á este punto cuando estipularon que "Los súbditos de sus Reales Magestades que en los dominios de una y otra Parte comerciaren, no deberán pagar, por las mercaderias que introdujeren ó sacaren, mayores derechos ni otros ningunos que los que se pidieren y cobraren de los súbditos de otra nacion la mas amiga; y si sucediere que en adelante se conceda por una ú otra parte alguna diminucion de derechos ú otros beneficios á alguna nacion estraña, gozarán tambien de ellos reciproca y enteramente los súbditos de una y otra Corona. Y asi como se ha convenido en lo tocante á los derechos, como queda referido, del mismo modo se ha establecido tambien por regla general entre sus Reales Magestades; que todos y cada uno de los súbditos suyos usen y gozen en todas las tierras y lugares sugetos al dominio de una y otra parte, enteramente de los privilegios, libertades é inmunidades en orden á todas y cualesquier imposiciones ó titulos tocantes á las personas, mercaderias, mercancias, navios, fletes, marineros, navegacion y tráfico, y logren en todo de igual favor asi en los tribunales y justicias, como en todas las demas cosas que miren al comercio ó á otro cualquier derecho, al que usa y

goza ó en adelante pudiere usar y gozar cualquier nacion estrangera la mas amiga, segun mas largamente se declara en el Articulo 38° del Tratado del año de 1667 que va especialmente inserto en el Articulo antecedente."

Las disposiciones terminantes que preceden no solo han tenido por parte de la España la mas fiel y cumplida observancia sinó que, en su inteligencia, ha presidido siempre la mas favorable interpretacion en obsequio de las reclamaciones Inglesas, contando con la justa reciprocidad como condicion precisa de su validez y consistencia.

La calificacion por una de las Partes Contratantes del origen y sistema de trabajo empleado en la fabricacion de los productos que son el obgeto del tráfico y comercio entre los dos paises, es una inovacion enteramente agena de las estipulaciones de los Tratados, que concederia la facultad, sin mutuo consentimiento, de alterarlos ó desvirtuarlos esencialmente como sucede en el presente caso. El Gobierno de Su Majestad Católica respeta los sentimientos filantrópicos que han podido inducir al de Su Majestad Britannica á adoptar esta medida; pero juzga que la aplicacion de este principio en su consiguiente latitud (que no puede menos de ser reciprocámente facultativa entre las dos Potencias) va necesariamente á afectar las relaciones mercantiles entre los dos paises y á alterar de cierta manera la inteligencia de sus estipulaciones.

Al paso que el Gobierno de Su Majestad Católica halla cual el que mas resuelto á reprimir por cuantos medios esten á su alcance el ílícito Tráfico de Esclavos y ha dado sobradas y recientes pruebas de cuan irrevocable es su determinacion en esta parte, tiene la persuasion de que los que actualmente existen en sus colonias disfrutan bajo la proteccion de las benéficas leyes de Indias de un bienestar y trato humano que los constituye en realidad de mejor condicion que la de numerosas clases trabajadoras de otros paises. Asi es que no puede participar de las convicciones del Gobierno de Su Majestad Britanica con respecto á la elaboracion del azúcar por manos esclavas en sus colonias, cuya exclusion del mercado Ingles, por esta sola circunstancia debe necesariamente considerar como una alteracion evidente de las disposiciones de los Tratados.

Existe otra consideracion en este grave negocio sobre la cual no puede menos el Infrascrito de llamar la atencion de su Excelencia Lord Aberdeen. Aun suponiendo que pueda residir en una de las Partes Contratantes la facultad de calificar el sistema mas ó menos humano en la fabricacion de un producto que es ó puede ser objeto de las relaciones comerciales entre los dos paises, existe un hecho evidente, positivo y palpable que por si solo resuelve esta cuestion. El azúcar de los Estados Unidos y de Venezuela, procedente de manos esclavas disfruta de la reduccion de derechos en las aduanas de Inglaterra, al paso que el mismo articulo elaborado de la misma manera, procedente de Cuba y Puerto Rico es excluido por medio de un derecho exorbitante.

Para cohonestar esta contradiccion se ha dicho que la Inglaterra estaba obligada por medio de Tratados especiales con el Gobierno de aquellas Repúblicas, á la admision de este producto: declaracion que honra sobremanera á su buena fé y que demuestra cuan puntual y exacta es en el cumplimiento de sus empeños; pero sin duda no se tuvo muy presente al decretar la exclusion de los azúcares de Cuba y Puerto Rico, que tambien existian Tratados vigentes entre la España y la Gran Bretaña que establecen que ambas Potencias disfrutaran en sus relaciones mercantiles de las mismas ventajas y privilegios que por una y otra parte se concedieren á las naciones mas favorecidas. El Infrascrito, Ministro Plenipotenciario de Su Majestad Católica, no alcanza que pueda darse ninguna esplicacion satisfactoria que baste á conciliar lógicamente estos dos extremos; a menos que no se pretenda dar una inteligencia enteramente estraña á las disposiciones de los Tratados, contraria á la interpretacion que han tenido hasta aqui, y que, si bien puede aducirse en el caso presente como debil apoyo de esta medida, creará una situacion enteramente nueva en las relaciones mercantiles de los dos paises basadas como se ha creido hasta ahora en estipulaciones claras, positivas y reciprocas.

Acaso se alegará que en la época en que se celebraron los Tratados á que se ha hecho referencia, los puertos de las colonias de Su Majestad Católica se hallaban cerrados al comercio de las naciones estrangeras, y que por consiguiente sus disposiciones no podran ser extensivas á aquellos paises. Facil es contestar anticipadamente á esta objeccion.

En el año de 1814 el Gobierno de Su Majestad Britanica solicitó y obtuvo del de Su Majestad Católica que en el caso de permitirse á las naciones estran-

geras el comercio con las Americas Españolas, la Gran Bretaña seria admitida á comerciar en aquellas posesiones como la nacion mas favorecida y privilegiada. Este empeño tuvo su cumplimiento en el año de 1824 en que se abrió para los estraños el comercio de las posesiones ultramarinas de España; pero ademas de ser evidente que en el mero hecho de acordar esta medida se entendia virtualmente que los productos de sus colonias serian admitidos con igual favor y ventaja por las demas naciones que entraban á disfrutar de este beneficio, esta condicion quedaba esplicitamente comprendida en las disposiciones de los Tratados ya existentes con la Ynglaterra, en que anticipadamente estaba convenido entre otras cosas que los súbditos de las dos Coronas gozarian en sus relaciones mercantiles en los dominios de los respectivos Soberanos y en todas las tierras y lugares sugetos á estos mismos dominios, de la diminucion de derechos ú otros beneficios que se acordaren en adelante á la nacion mas favorecida, segun mas por menor aparece en el Articulo 2do del Tratado de 1713 ya citado.

Incontestable aparece por si este argumento; pero para corroborarlo mas, en términos que no admita una razonable réplica, basta considerar que el mismo Gobierno de Su Majestad Britanica ha reconocido su fuerza cuando ha excluido del recargo de derechos, que es el objeto de esta reclamacion, á los azúcares procedentes de los dominios de Su Majestad Católica en Filipinas.

Queda pues demostrado que las disposiciones de los Tratados con respecto á las reciprocas ventajas mercantiles de los dos paises son extensivas á las colonias Españolas como parte integrante de sus dominios, y que no puede entenderse sin menoscabo de los referidos Tratados, que los azúcares de Cuba y Puerto Rico, productos de estos dominios, sufran un impuesto mayor que los de otras naciones que no pueden ser mas favorecidas ni privilegiadas. ¿ Bastará acaso para esta exepcion la calificacion por una de las Partes Contratantes del método de trabajo empleado en la elaboracion de los productos, sin la conformidad y asentimiento de la otra? Es evidente que aun cuando se acordare este principio, dejando á ambas partes la facultad discrecional de su aplicacion en sus dominios, no podria tener efecto con respecto á ninguna de las dos Potencias, hasta tanto que fuese extensiva á las demas naciones que se encontrasen en idéntico caso.

El Infrascrito, Enviado Extraordinario y Ministro Plenipotenciario de Su Majestad Católica, espera que las observaciones que preceden no podrán menos de pesar en el ánimo justificado del Gobierno de Su Majestad Britannica, y que haciendo examinar detenidamente las disposiciones de los Tratados existentes entre los dos paises, reconocerá que la España tiene, en virtud de sus estipulaciones vigentes, tanto derecho como los Estados Unidos de América y Venezuela, para solicitar y obtener que los azúcares procedentes de sus dominios de Cuba y Puerto Rico gozen de la misma rebaja de derechos acordada en los puertos de Inglaterra á aquellas naciones ú á otras mas favorecidas y privilegiadas.

El Infrascrito, &c.,

(Firmado) EL DUQUE DE SOTOMAYOR.

(Translation.)

London, May 5, 1845.

The Undersigned, &c., has the honour to inform the Earl of Aberdeen, &c., that he has it in command from his Government to address to his Lordship a claim relative to the measures recently adopted by the British Government with regard to the duties of importation into this country on sugars proceeding from Cuba and Porto Rico, which, in the estimation of the Spanish Government, involve a considerable alteration in the provisions of the Treaties in force up to the present time between the two nations.

According to the spirit and letter of those Treaties, the two Powers are to enjoy reciprocally in their commercial relations, the same liberties, advantages, and privileges that are conceded by either of them to the most favoured nation. It has ever been considered so, and in order to place this beyond any the least doubt, reference need only be made to the repeated and most recent applications of Her Britannic Majesty's Representative at the Court of Madrid, invoking

the faithful observance of those provisions in whatever he deemed conducive to the interests and commerce of Great Britain.

By the IXth Article of the Treaty of Utrecht it was agreed on as a general rule, that "all and singular the subjects of each kingdom shall, in all countries and places on both sides, have and enjoy at least the same privileges, liberties, and immunities as to all duties, impositions, or customs whatsoever, relating to persons, goods and merchandizes, ships, freight, seamen, navigation and commerce, and shall have the like favour in all things, as the subjects of France or any other foreign nation, the most favoured, have, possess, and enjoy, or at any time hereafter may have, possess, or enjoy."

In Article II of the Treaty of Navigation and Commerce between Spain and Great Britain, signed at Utrecht the $\frac{28 \text{ November}}{9 \text{ December}}$, 1713, renewed by that of Versailles of 1783, the High Contracting Parties recorded still more clearly their desire and intention with regard to this point, by stipulating that "the subjects of their Majesties, trading respectively in the dominions of their said Majesties, shall not be bound to pay greater duties or other imposts whatsoever, for their imports and exports, than shall be exacted of and paid by the subjects of the most favoured nation; and if it shall happen in time to come, that any diminution of duties or other advantages shall be granted by either side, to any foreign nation, the subjects of each Crown shall reciprocally and fully enjoy the same. And as it has been agreed, as is above mentioned, concerning the rates of duties, so it is ordained as a general rule between their Majesties, that all and every one of their subjects shall, in all lands and places subject to the command of their respective Majesties, use and enjoy at least the same privileges, liberties, and immunities concerning all imposts or duties whatsoever, which relate to persons, wares, merchandize, ships, freighting, mariners, navigation and commerce, and enjoy the same favour in all things (as well in the courts of justice as in all those things which relate to trade or any other right whatsoever), as the most favoured nation uses and enjoys, or may use and enjoy for the future, as is explained more at large in the XXXVIIIth Article of the Treaty of 1667, which is specially inserted in the foregoing Article."

The above peremptory provisions have not only obtained on the part of Spain the most faithful and most complete observance, but the most favourable construction has always been put in deference to English claims, reliance being had on just reciprocity as the necessary condition of the validity and consistency of those claims.

The definition by one of the Contracting Parties, of the origin and system of labour employed in manufacturing the products which are the object of traffic and commerce between the two countries, is an innovation entirely alien to the stipulations of Treaties, and one which would concede the power of altering or weakening them essentially without mutual consent, as happens in the present case. Her Catholic Majesty's Government respects the philanthropic sentiments which have induced the British Ministers to adopt this measure; but it holds that the application of this principle in its entire latitude (which is a power that must needs be reciprocally open to both of the two Powers), will necessarily affect the mercantile relations between the two countries, and alter in a certain manner the understanding of their stipulations.

While the Government of Her Catholic Majesty is most strenuously resolved to repress by all means in its power the illicit traffic in slaves, and while it has given abundant and recent proofs that its determination is irrevocable in this respect, it is persuaded that the slaves actually existing in its colonies enjoy under the protection of the beneficent laws of the Indies, a prosperity and humane treatment such as in reality place them in a better condition than that of numerous classes of labourers in other countries. Hence it cannot participate in the opinions held by the British Government with respect to the production of sugar by the hands of slaves in Spanish colonies, the exclusion of which article from the English market on account of this circumstance alone, Spain must necessarily consider as an evident alteration of the provisions of Treaties.

There is in this grave matter another consideration to which the Undersigned cannot help calling the attention of his Lordship.

Supposing even that there could reside in either of the Contracting Parties the power of prescribing the more or less humane system of manufacturing a product which is or may be the object of the commercial relations between the

two countries, there exists an evident, positive, and palpable fact, which of itself solves this question. The sugar of the United States and of Venezuela, proceeding from the hands of slaves, enjoys the reduction of duties in the English custom-houses; while the same article, wrought in the same manner, but proceeding from Cuba and Porto Rico, is excluded by means of an exorbitant duty.

In order to palliate this contradiction it has been said that England was compelled by special treaties with the Governments of those Republics to the admission of this product; a declaration exceedingly honourable to its good faith, and which demonstrates how punctual and exact it is in fulfilling its engagements; but in decreeing the exclusion of the sugars of Cuba and Porto Rico it was doubtless forgotten that there are Treaties in force between Spain and Great Britain, which lay down that the two Powers shall in their mercantile relations enjoy the same advantages and privileges as either party concedes to the most favoured nation. The Undersigned, &c., cannot find that any satisfactory explanation could be offered whereby logically to reconcile these two extremes, unless it be wished to give an entirely out-of-the-way meaning to the provisions of Treaties; a meaning at variance with the interpretation which they have hitherto received, and which, though it may be brought forward in the present case as a weak support of this measure, will create an entirely new situation in the mercantile relations of the two countries, which were based, as it has hitherto been conceived, on clear, positive, and reciprocal stipulations.

It will perhaps be alleged, that when the Treaties referred to were concluded, the ports of Her Catholic Majesty's colonies were shut against the commerce of foreign nations, and that consequently their provisions could not extend to those countries. It is easy to anticipate a reply to this objection.

In 1814 the Government of His Britannic Majesty demanded and obtained from that of His Catholic Majesty, that in case foreign nations were permitted to trade to Spanish America, Great Britain should be admitted to carry on commerce to those possessions as the most favoured and most privileged nation. This engagement was carried into effect in 1824, when the commerce with the Spanish possessions beyond sea was opened to foreigners; but not to mention its being evident that in the mere fact of granting this measure it was virtually understood that the products of her colonies would be admitted to similar favour and advantage by the other nations who began to enjoy this benefit, this condition was explicitly comprehended in the dispositions of the Treaties already existing with England, in which it was, by anticipation, stipulated among other things, that the subjects of the two Crowns should enjoy in their mercantile relations in the dominions of the respective Sovereigns, and in all the countries and places subject to these same dominions, the reduction of duties or other benefits that might be accorded thenceforward to the most favoured nation, as appears more in detail in Article II of the already-mentioned Treaty of 1713.

Though this argument is in itself incontestable, it receives a corroboration which does not admit of any rational reply, on bearing in mind that the British Government itself recognised its force by exempting from the high duties which are the object of the present application the sugars proceeding from Her Catholic Majesty's dominions in the Philippine Islands.

Thus it is demonstrated that the provisions of the Treaties with regard to the reciprocal mercantile advantages of the two countries, extend to the Spanish colonies as an integral part of the dominions of Spain, and that it cannot be meant without intrenching on the said Treaties, to make the sugars of Cuba and Porto Rico, the produce of those dominions, liable to a larger impost than those of other nations which cannot be either more favoured or more privileged. Can it be maintained in support of this exception that one of the Contracting Parties is to define the method of labour employed in the preparation of produce, without the agreement and consent of the other? It is evident that even if this principle were allowed, so as to make it discretionary with both Parties to apply it in their dominions, it could have no effect with respect to either of the two Powers until it had been made to extend to other nations similarly circumstanced.

The Undersigned, &c., hopes that the preceding observations will not fail to have weight with the rectitude of Her Britannic Majesty's Government, and that after duly examining the provisions of the Treaties subsisting between the

two countries, it will recognise that Spain has, in virtue of their binding and valid stipulations, as much right as the United States and Venezuela to request and obtain that the sugars proceeding from her dominions of Cuba and Porto Rico should enjoy the same reduction of duties that is accorded in the ports of Great Britain to the above or to other more favoured and privileged nations.

The Undersigned, &c.,

(Signed) THE DUKE OF SOTOMAYOR.

No. 2.

Copy of a Note from the Earl of Aberdeen to the Duke of Sotomayor.

Foreign Office, June 30, 1845.

THE Undersigned, &c., has had the honour to receive the note addressed to him on the 5th ultimo by the Duke of Sotomayor, &c., in which it is stated that in consequence of measures recently adopted by the British Government with regard to the duties levied upon the importation of sugar into the United Kingdom, the Duke of Sotomayor is directed to claim from Her Majesty's Government, that that article, when brought from Her Catholic Majesty's dominions of Cuba and Porto Rico to British ports, should enjoy the same reduction of duty which has been accorded to the sugar of Venezuela and the United States.

The claim thus advanced by the Spanish Government is based by the Duke of Sotomayor partly on the provisions of ancient Treaties between Great Britain and Spain, together with certain more recent commercial decrees of the King of Spain, and partly on the operation of an Act passed in the last session of Parliament, under which the sugar of the Philippine Islands has been admitted in the ports of the United Kingdom at a lower rate of duty.

Her Majesty's Government have duly examined the different Treaties subsisting between the two countries, and have attentively considered the various arguments advanced in the Duke of Sotomayor's note; and it now becomes the duty of the Undersigned to declare to the Duke of Sotomayor, that Her Majesty's Government cannot admit that, either in the early Treaties between the two Crowns, or in the later Decrees of His Catholic Majesty, or in the Acts of the Parliament of this country, any valid ground is to be found for the demand with which that note concludes, namely, that the sugar of Cuba and Porto Rico should be admitted into British ports on the footing of sugar of the United States and Venezuela.

And here, before going further, the Undersigned will take leave to state, that if it were otherwise, and if Her Majesty's Government could recognise any obligation under Treaty of so dealing with the produce of those Spanish colonies, they would have no desire, as the Duke of Sotomayor appears to suppose, to escape from such obligation, by assuming a right to prescribe the mode in which that produce must be raised or prepared, in order to enjoy the advantages which the Treaties might offer to it. The course which Her Majesty's Government have followed in respect of the two countries cited by the Duke of Sotomayor—Venezuela and the United States—is in itself a conclusive proof that they claim no such right to limit the operation of a commercial engagement; and the Undersigned will therefore pass over as irrelevant to the question, the declaration made by the Duke of Sotomayor of the strong determination of his Government to suppress the Slave Trade, and his statement of the prosperous condition and humane treatment of the slaves in the Spanish West Indies.

In proceeding now to consider the terms and effect of the Treaties which have been quoted by the Duke of Sotomayor, the Undersigned proposes to confine himself to an examination of their bearing upon the particular demand which has been made by the Government of Spain, and to a statement of the arguments by which Her Majesty's Government are led to the conclusion that they are not bound by any international obligation, to admit into British ports on the footing of the produce of the most favoured nation, sugar grown in the Spanish colonies of Cuba and Porto Rico.

Adverting, in the first instance, to the example by which the Duke of Sotomayor supports his interpretation of the Treaties, and which is drawn from the fact that the sugar of the Philippine Islands has already under the Act of Parliament been admitted into British ports at the low duty, Her Majesty's Government are unable to perceive that this circumstance has any bearing upon the question at issue.

The admission thereby given to the produce of the Philippine Islands was gratuitous. It was given of free will by the Government of Great Britain; and the concession of that advantage was made without any reference whatever to the Treaties in force with Spain. The adoption of the measure by Parliament, was a proof of the desire entertained by Great Britain to promote, so far as it was in her power to do so, the commercial intercourse of the two countries: but this constitutes no acknowledgment of any right possessed by Spain under her various treaties; nor can any inference be drawn from it as to the force of any portion of the engagements existing between the two Crowns.

Her Majesty's Government, however, readily admit that those engagements do confer certain rights and privileges reciprocally on the subjects of Great Britain and Spain.

The Treaty of 1667, although not noticed by the Duke of Sotomayor, stipulates in the XXXVIIIth Article, that "the people and subjects of the King of Great Britain and of the King of Spain, shall have and enjoy in the respective lands, seas, ports, havens, roads, and territories of the one or the other, and in all places whatsoever, the same privileges, securities, liberties, and immunities, whether they concern their persons or trade, with all the beneficial clauses and circumstances which have been granted, or shall be hereafter granted, by either of the said Kings, to the Most Christian King, the States-General of the United Provinces, the Hans Towns, or any other kingdom or state whatsoever, in as full, ample, and beneficial a manner as if the same were particularly mentioned and inserted in this Treaty."

The IXth Article of the Treaty signed at Utrecht on the 13th of July, 1713, and quoted by the Duke of Sotomayor, contains a similar provision, namely,—

"It is further agreed and concluded as a general rule, that all and singular the subjects of each kingdom shall, in all countries and places on both sides, have and enjoy at least the same privileges, liberties, and immunities as to all duties, impositions, or customs whatsoever, relating to persons, goods and merchandizes, ships, freight, seamen, navigation and commerce, and shall have the like favour in all things, as the subjects of France or any other foreign nation, the most favoured, have, possess, and enjoy, or at any time hereafter may have, possess, or enjoy." And the subsequent Treaty also signed at Utrecht, December 9th, 1713, and to which the Duke of Sotomayor also appeals, repeats the engagement in the following terms:—"The subjects of their Majesties, trading respectively in the dominions of their said Majesties, shall not be bound to pay greater duties or other imposts whatsoever, for their imports or exports, than shall be exacted of, and paid by, the subjects of the most favoured nation; and if it shall happen in time to come, that any diminution of duties or other advantages shall be granted by either side, to any foreign nation, the subjects of each Crown shall reciprocally and fully enjoy the same. And as it has been agreed as is above mentioned, concerning the rates of duties, so it is ordained as a general rule between their Majesties, that all and every one of their subjects shall, in all lands and places subject to the command of their respective Majesties, use and enjoy at least the same privileges, liberties, and immunities, concerning all imposts or duties whatsoever, which relate to persons, wares, merchandize, ships, freighting, mariners, navigation, and commerce, and enjoy the same favour in all things (as well in the courts of justice as in all those things which relate to trade, or any other right whatsoever), as the most favoured nation uses and enjoys, or may use and enjoy for the future, as is explained more at large in the XXXVIIIth Article of the Treaty of 1667, which is specially inserted in the foregoing Article."

Now, whatever may be the force of these engagements in other respects, Her Majesty's Government are satisfied that they are of no effect whatever in establishing a right on the part of Spain to that which she now claims;—the admission at a lower duty of the produce of her colonies of Cuba and Porto Rico.

For although the above-recited Articles of the Treaties of 1667 and 1713, do provide that the subjects of their Majesties shall respectively enjoy the privileges of the subjects of the most favoured nation; yet there were other stipulations concurrently in force, which entirely excepted the West Indian colonies of both countries from any privilege which might otherwise have been conveyed by those Articles.

On reference to the Treaty of the 18th of July, 1670, it will be seen, that while the first Article confirms the Treaty of 1667 and its clauses, "so far forth as they are not contrary or repugnant to this present Convention and Articles, or to anything therein contained," it immediately proceeds to declare in the VIIIth Article, that "the subjects and inhabitants, captains, masters of ships, mariners of the kingdoms, provinces and dominions of each confederate respectively, shall abstain and forbear to sail and trade in the ports and havens which have fortifications, castles, magazines or warehouses; and in all other places whatsoever possessed by the other party in the West Indies; to wit, the King of Great Britain shall not sail unto, and trade in, the havens and places which the Catholic King holdeth in the said Indies; nor in like manner shall the subjects of the King of Spain sail unto, or trade in, those places which are possessed there by the King of Great Britain." And so absolutely is the power of regulating the trade with the colonies kept in the hands of the respective Sovereigns, that the IXth Article provides that either King may, if he think fit, grant to the subjects of the other a general or particular licence to trade with his colonial possessions.

The terms are these: "But if at any time hereafter either King shall think fit to grant unto the subjects of the other any general or particular licence or privileges of navigating unto, and trading in, any places under his obedience who shall grant the same, the said navigation and trade shall be exercised and maintained according to the form, tenour, and effect of the said permissions or privileges to be allowed and given, for the security, warrant, and authority whereof this present Treaty and the ratification thereof shall serve."

While therefore the Treaty of 1667 gave generally to the subjects of Great Britain and Spain respectively, the privileges of the most favoured nation, the trade belonging to the West Indian colonies of the two countries was expressly excluded from the enjoyment of the privileges so conferred. Subsequently to the conclusion of the Treaty of 1670, all trade with the West Indian colonies of Great Britain was prohibited to the subjects of Spain; nor could the produce of Cuba and Porto Rico have found admission into English ports, inasmuch as the Navigation Law then in force would have prevented its importation in any other than British ships, while the Treaty of 1670 prevented its conveyance from Cuba by those British ships which alone could legally import it. Hence it follows that, admitting that the Treaty of 1667 conferred upon the subjects of Spain the position of the most favoured nation in British ports, yet that privilege could not, subsequently to 1670, have belonged to Spanish West India trade, because under the terms of the Treaty of 1670, such trade could not have been carried on with British ports.

The Duke of Sotomayor will observe that the footing on which the commercial relations of the two countries were thus placed by the earliest of the treaties to which appeal has been made, was not altered by any other treaty in the long series of conventions subsequently negotiated.

It is true that the Treaty of the 13th of July, 1713, continued the privileges conferred by that of 1667, and that the Treaty which followed on the 9th December, 1713, secured afresh to the subjects of Spain those same advantages: but both of these Treaties (the former of them by implication, the latter in direct terms) ratify and confirm the Treaty of 1670, which excludes the West Indian colonies of Spain from the benefit of the general privileges conferred. Again, in 1783, the Treaty of Versailles by its IInd Article renews and confirms the Treaties of 1667 and 1713; but it equally renews and confirms "in the best form," that of 1670, by which the above-mentioned special exclusion of the West Indian colonial trade is declared.

The result of the negotiations at the close of the war in 1814, and the terms of the Treaties then concluded, made no change in the position of the Spanish West Indian colonies. By the Ist Additional Article which forms an integral part of the Treaty of July, 1814, it was declared "that pending the negotiation of a new Treaty of Commerce, Great Britain should be admitted to

trade with Spain upon the same conditions as those which existed previously to the year 1796: all the Treaties of Commerce which at that time subsisted between the two nations being hereby ratified and confirmed." But the conditions which existed previously to the year 1796 were those which existed in 1783; and that Treaty, as has been shown, renewed not only those of 1667 and 1713, but also the Treaty of 1670. Thus it appears that up to the period of 1814, being the date of the most recent Treaty, the obligations of Great Britain towards Spain remained precisely of the same nature and extent as those imposed by the earliest Treaties. Great Britain was bound, as in 1667 and 1713, to treat the subjects of Spain on the footing of the most favoured nation; but no such obligation was imposed upon her in respect of the West India trade of Spain, which, by the operation of the Treaty of 1670, was altogether excluded from the ports of this country, and consequently from any privileges conceded there.

If any doubt remain that the produce of the Spanish West Indies had no claim under treaty to be received on the footing of the most favoured nation, that doubt will receive much elucidation from the language of another portion of the Treaty of 1814: for by the IVth Article it is provided that "in the event of the commerce of the Spanish American possessions being opened to foreign nations, His Catholic Majesty promises that Great Britain shall be admitted to trade with those possessions as the most favoured nation." From these words it is evident, in the first place, that the Spanish West Indian colonies were not then open to foreign nations or to Great Britain, and consequently that the general privileges conferred by the ancient Treaties could not apply in reference to the trade of these possessions: and in the second, that at the negotiation of the Treaty of 1814, the ancient Treaties were not considered by Spain herself, to confer the privileges for which she now contends: for if the ancient Treaties, revived by that of 1814, had given to the two nations a mutual and general right to the treatment of the most favoured nation, it would have been unnecessary for Spain to promise, that in the event of the trade with the Spanish American possessions being opened to foreign nations, Great Britain should be admitted to trade with those possessions as the most favoured nation, inasmuch as Great Britain would aleady have had that right by virtue of the ancient Treaties. Yet an article was formally inserted imposing upon Spain that obligation, and thereby placing it beyond question, that Spain did not then consider that the Treaties gave to the respective parties, that right of the most favoured nation with regard to the American colonies, which she would now deduce from them.

The Duke of Sotomayor, however, contends that Spain has a claim to be treated by Great Britain as a most favoured nation in regard of colonial commerce, because the Crown of Spain in 1824 conceded to Great Britain, by Royal Decree, the liberty of trading with its American colonies; and he speaks of this decree as the execution of the engagement taken by Spain in the Treaty of 1814 which has just been referred to. But a very short examination of the circumstances connected with the origin of that decree, will suffice to show that no such claim can be maintained.

The engagement in the Treaty of 1814 was concluded in the expectation that "the troubles and disturbances which then prevailed in the Spanish American provinces would cease, and that the subjects of those provinces would return to their allegiance to their lawful Sovereign;" and His Britannic Majesty engaged, under that expectation, "to take the most effectual measures for preventing his subjects from furnishing arms, ammunition, or any other warlike article, to the revolted in America."

The hope of a reconciliation between Spain and the Spanish American provinces having, however, been unfortunately disappointed, and those provinces having successively thrown off the yoke of Spain, the British Parliament in 1822 passed a law to regulate the trade between Spanish America and the British colonies; and early in 1824 it was formally intimated by the British Government to the Government of Spain, that the recognition by Great Britain of the independence of the new States which formerly composed the Spanish American provinces could not be much longer delayed.

It was not until after these events and this intimation, that His Catholic Majesty, when the provinces in question had passed from his authority, issued the Decree of 1824, permitting a direct trade with the Spanish American domi-

nions to the subjects of all Powers allies and friends of Spain. Now this decree did not profess to be, nor can it be considered to have been, the fulfilment of any commercial engagements on the part of Spain towards Great Britain: nor can Her Majesty's Government perceive that the promulgation of it imposed any obligation whatever of a reciprocal character on the Crown of Great Britain, with regard to the trade between either country and the colonies of the other. On the contrary, nothing can show more clearly that no such reciprocal obligation did exist, than the fact that no concession of any kind in respect of Spanish trade was made, for a space of four years subsequently to the promulgation of that Royal Decree.

And when at length in the year 1828, an Order in Council was issued, conferring certain privileges of trade on the subjects of Spain, the form of that order furnishes another proof, not only that Great Britain held that Spain possessed no right to be treated as a most favoured nation in respect of colonial trade, but that the Government of His Catholic Majesty acquiesced in that view of the commercial relations of the two countries.

For the Order in Council of 1828 did not confer on Spain the full privileges of colonial trade; it did no more than sanction a trade between the colonies of Spain and the colonial possessions of Great Britain. But if Spain had considered that any of her existing Treaties conferred upon her the privileges of the most favoured nation with respect to colonial trade, she would not have remained satisfied with the limited privileges granted by that Order; but would undoubtedly have demanded that the full privileges which had been granted to other nations should also be accorded to her. Her acceptance of the limited privileges conferred, and her acquiescence in the limitation, furnish strong proof that she had, and was conscious she had, no right by Treaty to the footing of the most favoured nation with regard to American colonial trade.

But while it is held that the trade of Cuba and Porto Rico is clearly excluded by the Treaty of 1670 from the advantages to be claimed under the Treaties of 1667 and 1713, Her Majesty's Government are by no means disposed to allow that the non-admission of Cuba and Porto Rico sugars at the low duty, depends solely on the Treaty of 1670, or on the arguments already adduced. On the contrary, they are prepared to show that if no such provision with respect to West Indian colonial trade were to be found, still under the Treaties of 1667 and 1713, Spain could not claim that sugars, the produce of her West Indian colonies, should be admitted at the same duties as those of the most favoured nation.

The IInd Article of the Treaty signed on the 9th of December, 1713, does indeed provide that "the subjects of their Majesties trading respectively in the dominions of their said Majesties, shall not be bound to pay greater duties or other imposts whatsoever, for their imports or exports than shall be exacted of, and paid by, the subjects of the most favoured nation; and if it shall happen in time to come that any diminution of duties or other advantages shall be granted by either side to any foreign nation, the subjects of each Crown shall reciprocally and fully enjoy the same." But that Article has no reference whatever to the produce of the respective dominions, or to the place of growth of the articles produced. It does no more than provide that no other or higher duties shall be levied on goods when imported by the subjects of Spain, than are levied on the same goods when imported by the subjects of any other nation; and that no greater impost shall be charged on a cargo of sugar when imported by a subject of Spain, than on the same cargo of sugar imported by a subject of the United States: but there is nothing whatever in the Article to prevent a higher duty being charged on the sugar itself the produce of the Spanish dominions, than on sugar the produce of the United States. The obligation which is imposed, is to treat as the subjects of the most favoured nation the subjects of Spain; but there is no obligation to treat the produce of Spain as Great Britain is used to treat the produce of the most favoured nation. And here the Undersigned must remind the Duke of Sotomayor, that in the case of the United States as well as in that of Venezuela, the obligation to admit the sugars of those countries at the low duty, rests upon stipulations of an entirely different character from those which are contained in the Treaties with Spain. For the articles in the Treaties with those countries, instead of being limited to the privileges or liabilities of the subjects of each State, expressly confer privileges on goods being the growth, produce, or manufacture of the respective countries.

Whether, therefore, the demand which has now been made by the Duke of Sotomayor, be based on those provisions of the ancient Treaties which have a general application, or upon the articles which more especially regulate the West Indian colonial trade, the Undersigned must, in the name of Her Majesty's Government, decline to acknowledge any right on the part of Spain to claim the admission of the sugars of Cuba and Porto Rico on the same terms as the sugars of Venezuela and the United States.

It has been shown that no such claim can be founded on the terms of the ancient Treaties; that although the Treaty of 1667 conferred the general privileges of the most favoured nation on the subjects of Spain, yet a subsequent treaty, by provisions practically prohibiting all trade with the Spanish West Indian colonies, excluded the trade of those colonies from any privileges which might be enjoyed in British ports; that although later treaties confirmed those general privileges, they also concurrently renewed the Treaty by which the West Indian colonial trade continued to be excluded from the enjoyment of those privileges; and that under the last Treaty of 1814, the same stipulations as existed in 1670 were left in every respect in full force.

The Undersigned has further shown, that both in 1814 and subsequently to that date, there have been public commercial acts promulgated by both Powers, which confirm the view already expressed, that neither of the two Governments at that time construed the existing treaties as conferring the privileges of the most favoured nation with regard to the West Indian colonial trade.

The article by which Spain specially bound herself to convey such a right to Great Britain in the Treaty of 1814; the subsequent refusal of Great Britain to grant more than the limited privileges contained in the Order in Council of 1828; and the silent acquiescence of Spain in the limitation thus imposed: these facts, together with the course of general practice in the commercial intercourse between the two countries, all combine to show that it has not been held either by the Government of Great Britain or by that of Spain, that the ancient Treaties conferred upon either party the right of the most favoured nation in respect to the West Indian trade.

And finally, it has been established, that, setting aside the provisions which apply specifically to that trade, the claim now asserted by the Spanish Government would still be inadmissible, inasmuch as it is only in respect of her subjects, and by no means in respect of her produce, that the Treaties in force between the two countries secure to Spain the advantages of the most favoured nation.

Under these circumstances, the Undersigned regrets that he must conclude this note by stating that Her Majesty's Government are unable to admit the claim which the Duke of Sotomayor has advanced for a reduction of the duties now levied upon sugar the produce of the Spanish West Indian colonies.

The Undersigned, &c.,

(Signed) ABERDEEN.

SUGARS OF CUBA AND PORTO RICO.

COPIES of Correspondence respecting the Claim of Spain that the Sugars of Cuba and Porto Rico should be admitted into the United Kingdom upon the same terms as the Sugars of the United States and of Venezuela.

Presented to both Houses of Parliament by Her Majesty's Command. 1845.